

May 1, 2-19. I file this email and its attached writ petition in FCC dockets 11-71, and 13-85, since matters of the writ petition below involve matters in those dockets. - Warren Havens



Warren Havens <wrrnvns@gmail.com>

Fwd: Service of US Supreme Court cert petition, in 17-60742, 5th Cir, Havens v. Maritime et al

Warren Havens <wrrnvns@gmail.com>

Wed, May 1, 2019 at 10:56 AM

To: "cmgeno@cmgenolaw.com" <cmgeno@cmgenolaw.com>, "Lindner, Erno" <elindner@bakerdonelson.com>

Cc: Tim Lupinacci <tlupinacci@bakerdonelson.com>, warren havens <wrrnvns@gmail.com>

Mr. Geno, Counsel to Maritime Communications/ Land Mobile LLC,
Mr. Linder, Counsel to Choctaw Telecommunications,
cc: Mr. Lupinacci, Counsel to Choctaw Telecommunications,

Attached is a copy of the writ petition, noted below, that I timely filed.
Hard copies of the writ petition in booklet form were mailed.

Sincerely
Warren Havens

----- Forwarded message -----

From: **Warren Havens** <wrrnvns@gmail.com>

Date: Mon, Apr 29, 2019 at 12:46 PM

Subject: Service of US Supreme Court cert petition, in 17-60742, 5th Cir, Havens v. Maritime et al

To: Craig Geno <cmgeno@cmgenolaw.com>

Cc: Lindner, Erno <elindner@bakerdonelson.com>, Lupinacci, Tim <tlupinacci@bakerdonelson.com>

Please let know if you will accept email service of a PDF copy, in lieu of service of a hard copy, under Supreme Court rule 29 § 5(a) of the petition I will be filing tomorrow --

For a writ of certiorari to the Supreme Court of the Fifth Circuit Decisions on Appeal, in *Havens v. Maritime Commc'ns/Land Mobile L.L.C.* (In re Maritime Commc'ns/Land Mobile L.L.C.), ____ Fed. Appx. ____, No. 17-60742, 2018 WL 6720703 (5th Cir. Dec. 20, 2018), and the Circuit Court's decision on reconsideration thereof.

Sincerely
Warren Havens

--

eitt líf með lögum skal land vort byggja eigi með ólögum eyða í jörðu, gríðastaðir



[fml printed] signed. 3 Havens v MCLM Writ of Cert.pdf

359K

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WARREN HAVENS,

Petitioner,

v.

MARITIME COMMUNICATIONS/ LAND MOBILE
L.L.C.; CHOCTAW TELECOMMUNICATIONS, L.L.C.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeal for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Warren Havens
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Petitioner, pro se

April 30, 2019

QUESTIONS PRESENTED

The wireless telecommunications sector, increasingly central to the nation and its other critical services, is exclusively licensed by the Federal Communications Commission (“FCC”) under the public policy criteria of the Communications Act, and this fast-expanding sector is subject to many large chapter 11 bankruptcy cases under the substantially conflicting public policy criteria of the Bankruptcy Act. Bankruptcy and higher federal courts regularly struggle with this conflict. The interrelated questions posed by this case are of nationwide significance to resolve threshold issues in this conflict to guide the lower courts. The conflict includes a split in the circuit courts regarding the threshold question 1 below.

1. Is the legal standing, thus participation rights, of a party -- in this case, the petitioner -- asserting claims to FCC licenses under title held by the Debtor in a chapter 11 bankruptcy case that is disposing of the licenses, determined (i) by final decision of the FCC under its legal-standing standards, generally, Article III standing, or (ii) by final decision of the bankruptcy court, or as in this case, the associated district court under the district and Fifth Circuit court’s standards in this case, applying a more strict and narrow legal-standing standard?

2. If, under question 1, the bankruptcy court or associated district court determines petitioner’s standing, and rejects his claims to the licenses, and thereafter the FCC decides to uphold his claims to the licenses, will that FCC decision retroactively govern, including the reversal or voiding of, any decisions of the bankruptcy court disposing of the licenses?

3. Does the district court decision to dismiss the petitioner’s claims to the FCC licenses violate bankruptcy code section § 362(b)(4) that exempts from the automatic

stay the exclusive FCC authority to determine the license claims?

4. Does the district court decision that petitioner lost legal standing and thus dismissed his claims to the FCC licenses in the bankruptcy case violate petitioner's rights of due process under the Fifth Amendment to the US Constitution to a hearing, where the district court acted as an appeals court and held no hearing, and its decision did not involve a bankruptcy court hearing that dismissed the claims?

5. Is the district court decision an unconstitutional taking of the bankruptcy-claims property at issue under the Fifth Amendment to the US Constitution?

PARTIES

All parties appear in the caption on the cover page.

Herein,

“Debtor” means the respondents herein, Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C., respectively, the debtor and its chapter-11 plan successor in the subject bankruptcy case.

“Petitioner” means the petitioner herein, Warren Havens, pro se, a party in interest in the subject bankruptcy case, whose claims in and appeals from the subject bankruptcy case were dismissed by the decisions of the district court, and upheld by the decisions of the Fifth Circuit that are subject of this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Warren Havens respectfully petitions for a writ of certiorari to the Supreme Court of the Fifth Circuit Decisions on Appeal, in *Havens v. Maritime Commc'ns/Land Mobile L.L.C.* (In re Maritime Commc'ns/Land Mobile L.L.C.), ____ Fed. Appx. ____, No. 17-60742, 2018 WL 6720703 (5th Cir. Dec. 20, 2018), and the Circuit Court's decision on reconsideration thereof.

OPINIONS BELOW

Before the Fifth Circuit:

The unpublished decision of the Fifth Circuit denying rehearing reconsideration in the case, entered on January 30, 2019, is attached as Appendix A.

The preceding unpublished decision of the Fifth Circuit affirming decisions of the District Court of the Northern District of Mississippi first dismissing appeals of appealable orders of the bankruptcy court, then upholding the dismissals on rehearing reconsideration, entered on attached as Appendix D.

Before the District Court:

The unpublished decision of the District Court dismissing the appeals is attached as Appendix B. The subsequent unpublished decision of the District Court upholding the dismissals on rehearing reconsideration is attached as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

RELEVANT CONSTITUTIONAL
AND STATUTORY PROVISIONS

This case arises under the Federal Communications Act, 47 U.S.C. §151 et seq., including FCC licensing under 47 U.S.C. §§ 301-312, the United States Bankruptcy Code in 11 U.S.C., including 11 U.S.C. § 362(b)(4), and under the U.S. Const. amend. V regarding due process, and unjust takings (“[N]or shall private property be taken for public use, without just compensation.”).

STATEMENT OF THE CASE

The holdings of the Fifth Circuit’s decision of December 20, 2018, subject of this petition, which affirms the district court decisions also subject of this petition, are the following. It is sufficient to state the case here. While I strongly assert that the Circuit and district courts erred their factual assumptions (led to that by MCLM and Choctaw as their pleadings show),¹ this petition poses questions on these decisions’ legal conclusions only, and relief granted as to the legal conclusions would provide substantial relief to petitioner.

II. Standing to appeal an order of the bankruptcy court “is an even more exacting standard than traditional constitutional standing.” *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004). “[T]he ‘person aggrieved’ test demands a higher causal nexus between act and injury; appellant must show that he was ‘directly and adversely affected pecuniarily by the order of the bankruptcy court’ in order to have standing to appeal.” *Id.* at 202–03

¹ I also contend that legal standing, including in litigation over FCC licenses, is determined at certain dates and is not frozen at a point in the litigation as the District Court in this case assumed (e.g., *see SunCom Mobile & Data, Inc. v. F.C.C.*, 87 F.3d 1386 (D.C. Cir., 1996) at p. 1398) but that is not directly an issue in this petition.

(quoting *In re Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983)).

Bankruptcy Rule 8022 does not provide a standard of decision for a motion for rehearing, but such a motion may be granted to correct a “mistaken use of facts or law” in the prior decision. *In re Coleman*, Civil Action No. 15- 569, 2015 WL 7101129, *1 (E.D. La. Nov. 13, 2015) (citing *In re Hessco Indus., Inc.*, 295 B.R. 372, 375 (9th Cir. 2003)).

III. Havens addresses a variety of peripheral issues in his brief but does not identify facts sufficient to demonstrate his standing. He says that the district court improperly held that he lacked standing to participate in FCC administrative proceedings. This mischaracterizes the decision. The district court did not purport to resolve Havens’s standing before the agency. Rather, it analyzed his standing to appeal the bankruptcy orders. After his claims failed in the New Jersey case, he had no asserted interest in the bankruptcy. And even generously construing Havens’s arguments as a challenge to the treatment of his interests in FCC proceedings, he misses the mark. The district court correctly noted that the FCC had denied relief to Havens, leaving him with no interest in the licenses either.

Because he had no remaining claim against Maritime, Havens was not “directly and adversely affected pecuniarily by the order of the bankruptcy court,” as required for standing to appeal. *Coho Energy*, 395 F.3d at 203 (quoting *Fondiller*, 707 F.2d at 443). And the district court did not err in denying Havens’s motion for rehearing. The motion essentially reiterated his original arguments and did not identify mistaken use of facts or law in the prior order.

REASONS TO GRANT THE WRIT

1. Fundamental Legal Errors of the District and Circuit Court's Decisions

The DC Circuit Court held in *NextWave Personal Commun. v. Fed. Commun. Comm'n*, 254 F.3d 130 (D.C. Cir., 2001) found, at p. 148:

Here, the Second Circuit appears to have decided that section 362 does not confer jurisdiction on the bankruptcy court because subsection 362(b)(4)'s "regulatory power" exception applies as a substantive matter. We thus agree with the Commission that issue preclusion bars NextWave from relitigating the question of whether the license cancellation falls within subsection 362(b)(4). The Second Circuit spoke clearly and unequivocally about this issue, stating that "[u]ndoubtedly, the FCC is a governmental unit that is seeking 'to enforce' its 'regulatory power,' " *In re FCC*, 217 F.3d at 138, and that "we hold that the FCC's regulatory decisions fall within [subsection] 362(b)(4)." *Id.* at n.8. And under the Second Circuit's jurisdictional reading of section 362, this decision was necessary to the case: if subsection 362(b)(4) did not apply, section 362 could have provided a basis for the bankruptcy court to assert jurisdiction over the license cancellation. In considering NextWave's Bankruptcy Code arguments, see Section III *infra*, we will thus assume that the license cancellation falls within the regulatory power exception to the automatic stay.

FCC license revocation, or reassignment, as much as

license cancellation, is also under bankruptcy code section 362(b)(4). This US Supreme Court upheld the above finding in *Fed. Commun. Comm'n v. NextWave Personal Commun.*, 537 U.S. 293, 154 L.Ed.2d 863 (2003) at p. 302:

There are, for example, regulatory exemptions from the Bankruptcy Code's automatic stay provisions. 11 U.S.C. § 362(b)(4).

As the Second Circuit pointed out earlier in the series of *NextWave* cases, the United States courts of appeals have exclusive jurisdiction, and bankruptcy courts thus lack jurisdiction, over FCC licensing actions under its regulatory capacity. *In re Next Wave Pers. Communications, Inc.*, 200 F.3d 43, 54 (2d Cir. 1999).

Thus, it is the FCC in the first instance, and thereafter D.C. Circuit Court under 47 U.S.C. §402(b), and not the subject bankruptcy court, and thereafter its district court, that determines FCC licensing actions, unless those are, as in the *NextWave* case, in violation of bankruptcy code § 525(a):

[A] governmental unit may not ... revoke ... a license ... to ... a person that is ... a debtor under this title ...

solely because such ... debtor ... has not paid a debt that is dischargeable in the case under this title

537 U.S. 293, 300. However, in this case here, § 525(a) is not involved, only § 362(b)(4).

Petitioner's Havens claims to the subject FCC licenses that MCLM alleges to hold in its chapter 11 case, are claims that only the FCC can determine by final action (which has not occurred, and did not show as having occurred anywhere in the record of the subject bankruptcy case including during the appeal stages).² These Havens

² This footnote pertains to how the FCC determines legal standing to pursue claims to FCC licenses, and shows that it is not the same as the District Court and Fifth Circuit alleges applies in a bankruptcy case. In *Rainbow/Push Coalition v. F.C.C.*, 396 F.3d 1235 (D.C. Cir., 2005), standing in FCC licensing matters is discussed:

In *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982), the United States Supreme Court established that an organization has constitutional standing to challenge the discriminatory practices of a defendant if those practices adversely affect the activities the person or organization undertakes to fight discrimination.

Applying *Havens v Coleman* to the case in this petition, while at the time of the District Court's decision, a division of the FCC found petitioner lost standing to continue with claims to the Debtor's FCC licenses *before the FCC* (which was appealed within the FCC and remains pending at this time, and petitioner alleges new events have cured the alleged loss of standing), petitioner had and always had had legal standing under *Havens v Coleman* since these petitioner claims to licenses before the FCC challenged "discriminatory practices" of the FCC to unlawfully

claims are thus not subject to the bankruptcy court's jurisdiction to determine, as to their validity, or as to Havens's legal standing to pursue the claims before the FCC at any stage.

In its decision, the Fifth Circuit relies on *In re Coho Energy Inc.*, 395 F.3d 198 (5th Cir., 2004). However, *Coho* does not address the issues posed by Petition reflected in the decision, and posed and argued herein. This court in *Norwest Bank v. Ahlers*, 485 U.S. 197 (1988) made it clear that the broad equitable powers of a bankruptcy court cannot be used in a manner that is inconsistent with express statutory provisions of the Bankruptcy Code: "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code," 485 U.S. at 207. That does not

accommodate unlawful and fraudulent actions and practices of the Debtor, and were "organization" claims of several LLCs in which Havens was the majority interest holder that were "adversely affected," where petitioner was the person who had "undertake[n] to fight" the adverse effects for the organizations and his interests in them (as well as for his direct interests also adversely affected).

allow violation of Code § 362(b)(4) which, regarding all FCC licensing decisions that are not subject-- as in the *Nextwave* decisions of D.C. Circuit and this court, cited above-- to § 525(a) of the Code, to jurisdiction of the bankruptcy court. And without jurisdiction, the bankruptcy court cannot dismiss, for alleged lack of standing, claims of a party in interest in a chapter 11 case to the Debtor's FCC licenses pending before the FCC, and cannot dispose of the licenses free from any later FCC decision in favor of the subject claimant, such as by finding such an FCC licensing decision equitably moot if the bankruptcy court's disposition of the licenses has been, at that time, completed or substantially completed.

2. A split in the Circuit Courts Regarding the Question Posed of What Legal-Standing Standard Applies in Bankruptcy Cases Should be Resolved

A split in the circuits regarding the first question posed is shown as follows. (1) In the instant case, the Fifth Circuit, affirming the district court, found that legal standing to be or remain in a bankruptcy case, and appeals

therefrom, is different than legal standing in litigation before the FCC or in review of final FCC licensing decisions before the D.C. Circuit Court of Appeals which, generally, applies Article III standing. See Statement of the Case above. (2) However, the Third Circuit (which reviews many bankruptcy cases from the busy Delaware bankruptcy court), agreeing with the Seventh Circuit, clearly finds otherwise, in *In re Global Indus. Technologies Inc.*, 645 F.3d 201, 54 Bankr.Ct.Dec. 178 (3rd Cir., 2011) (later followed by the Eleventh Circuit, see below) at p. 209 et seq. (underlining added):

B. Standing

... [O]ur disposition of this appeal treats only...
bankruptcy standing.

[...]

To object to the confirmation of a reorganization plan in bankruptcy court, a party must, in the first instance, meet the requirements for standing that litigants in all federal cases face under Article III of the Constitution. See *Danvers*, 432 F.3d at 290–91. A party seeking constitutional standing must demonstrate an “injury in fact” that is “concrete”, “distinct and palpable”, and “actual or imminent.” *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990). Additionally, the party

must establish that the injury “fairly can be traced to the challenged action and is likely to be redressed by a favorable decision.” *Id.* (internal quotations omitted). We have noted that “[t]he contours of the injury-in-fact requirement, while not precisely defined, are very generous.” *Bowman v. Wilson*, 672 F.2d 1145, 1151 (3d Cir.1982). The standard is met as long as the party alleges a “specific, ‘identifiable trifle’ of injury,” *id.* (quoting *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 686–90, 690 n. 14, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973)), or a “personal stake in the outcome of [the] litigation,” *The Pitt News v. Fisher*, 215 F.3d 354, 360 (3d Cir.2000). See *In re Congoleum Corp.*, 426 F.3d 675, 685 (3d Cir.2005) (“Article III standing need not be financial and only need be fairly traceable to the alleged illegal action.”).

Standing in bankruptcy cases is also governed by the terms of 11 U.S.C. § 1109(b), which provides that “[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.” 11 U.S.C. § 1109(b). The list of potential parties in interest in § 1109(b) is not exclusive. On the contrary, that section “has been construed to create a broad right of participation in Chapter 11 cases.” *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 214 n. 21 (3d Cir.2004). The United States Court of Appeals for the Seventh Circuit has described a party in interest as “anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir.1992). That “party in interest” test comports with our own

definition of a “party in interest” as one who “has a sufficient stake in the proceeding so as to require representation.” *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir.1985). We thus adopt the test set forth by the Seventh Circuit in *James Wilson* as a helpful amplification of our definition in *Amatex*. Status as a party in interest is of particular relevance here because the Bankruptcy Code expressly provides that parties in interest “may object to confirmation of a plan.” 11 U.S.C. § 1128(b).

In applying the teachings of *James Wilson* and *Amatex*, we are guided by our previous statement that “[s]ection 1109(b) must be construed broadly to permit parties affected by a chapter 11 proceeding to appear and be heard.” *Amatex*, 755 F.2d at 1042 (citation omitted) (internal quotation marks omitted). The District Court described the Bankruptcy Code's “party in interest” standard as “more exacting” than the constitutional injury-in-fact requirement (App. at 15),²⁴ but we think that is a misunderstanding of the Code. Persuasive authority indicates that Article III standing and standing under the Bankruptcy Code are effectively coextensive. Compare, e.g., *The Pitt News*, 215 F.3d at 360 (injury-in-fact requires a “personal stake” in litigation), and *Danvers*, 432 F.3d at 291 (same), with *Amatex*, 755 F.2d at 1042 (party in interest must have a “sufficient stake” in bankruptcy proceedings). Interpreting the “party in interest” requirement as an additional obstacle to bankruptcy standing would frustrate the purpose of § 1109(b), which was intended to “confer[] broad standing at the trial level,” *In re PWS Holding Corp.*, 228 F.3d 224, 249 (3d Cir.2000), and to “continue[] in [the] tradition” of “encourag[ing] and promot[ing] greater participation in reorganization cases,” *Amatex*, 755 F.2d at 1042.²⁵

The Eleventh Circuit agreed with the preceding Third Circuit's *In re Global Indus. Technologies* decision in *Basson v. Fed. Nat'l Mortg. Ass'n* (In re Basson) (11th Cir., 2018) in footnoting (underlining added):

2. ...[O]ur determination that Fannie Mae had statutory standing is enough for us to determine that it had Article III standing. See *In re James Wilson Assocs.*, 965 F.2d 160, 168 (7th Cir. 1992)...; see also *In re Global Indus. Techs., Inc.*, 645 F.3d 201, 211 (3d Cir. 2011) (en banc) (rejecting the position that statutory standing is more exacting than Article III standing and noting that the two "are effectively coextensive").

Addressing question 1 posed herein will resolve this split in the circuit courts.

3. The District Court Decision Violates Bankruptcy Code § 362(b)(4) that Exempts from the Automatic Stay FCC Authority to Determine License Claims

As discussed above in section 1 above, Bankruptcy Code § 362(b)(4) exempts FCC regulatory actions including licensing actions³ from the bankruptcy automatic stay and

³ That, as in the instant case, are not subject to bankruptcy code § 525(a): see the D.C. Circuit and Supreme Court *NextWave* decisions quoted in section 1 above.

jurisdiction of the bankruptcy courts. By its decisions in the instant case, the Fifth Circuit and district court violate this FCC regulatory exemption and jurisdiction by deciding what legal standing and participation rights petitioner has in the subject bankruptcy case and appeals therefrom as to petitioner's claims to the FCC licenses of the Debtor, since that is under FCC jurisdiction, and since the FCC's decision on the claims and related legal standing was pending and not final (and to this day remains pending).

4. The District Court Decision Violates Fifth Amendment Due Process Hearing Rights and Causes Unjust Takings

a. Due process hearing rights. The district court's decision that petitioner lost legal standing and thus dismissed his claims to the FCC licenses in the bankruptcy case violated petitioner's rights of due process under the Fifth Amendment to the US Constitution to a hearing, where the district court acted as an appeals court and held no hearing, and its decision did not involve a bankruptcy court hearing that dismissed the claims.

Fifth Amendment due process requires “some kind of a hearing” at the evidence-taking court, and in a bankruptcy case the District Court is the first level appeals court, and thus it cannot provide, and in this case did not provide, any hearing required by due process.

In *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, (1985) at p. 542 this court held that, absent emergencies:

An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." [] *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971) (emphasis in original); see *Bell v. Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971).

This due-process requirement includes three elements: (1) an impartial tribunal; (2) notice of the charges within a reasonable time before the hearing; and (3) absent emergency circumstances, a pre-determination hearing.

Miller v. City of Mission, 705 F.2d 368, 372 (10th Cir. 1983). While not necessary in every case, “procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his [or her] livelihood.” *Willner v. Comm. on Character*, 373 U.S. 96, 103 (1963).

Because the district court was acting as the appeals court and did not hold any such due-process hearing, its decision to dismiss petitioner’s FCC-licenses claims in the bankruptcy case, which are property rights, violated the Fifth Amendment.⁴

b. Unjust takings caused. In addition, the district court decision is an unconstitutional taking of petitioner’s claims to the Debtor’s FCC licenses (which are a form of property rights) under the Fifth Amendment to the US Constitution: “[N]or shall private property be taken for public use, without just compensation.” Valid or

⁴ A ramification is that the bankruptcy case, after this deprivation, is infected by it, which heightens the importance presented in section 5 below.

alleged-valid Fifth Amendment takings of FCC licenses may be made, but only by the FCC for good cause, objections to a final decision of which could be reviewed only by the United States Court of Appeals for the District of Columbia Circuit under the Communications Act Section 402(b), 47 U.S.C. §402(b), and not by a district or bankruptcy court. See, e.g. *Alpine PCS, Inc. v. United States*, 878 F.3d 1086 (Fed. Cir., 2018) at pp. 1096-1097 (text in brackets and footnote added):

...[T]he Communications Act provides "a ready avenue to bring [a] takings claim" [of FCC licenses] and "withdraws Tucker Act jurisdiction." *Horne*, 569 U.S. [*] at 527–28, 133 S.Ct. 2053.

[...]

The Communications Act, including 47 U.S.C. § 402(b), readily supports the conclusion that, as relevant to Alpine's grievance, there is a comprehensive statutory scheme through which Alpine could present, and is directed to present, its takings claim,....

5. Major National Importance to the Telecom and Other Critical Sectors

This section's national-importance showing is in

[*] *Horne v. Dep't of Agriculture*, 569 U.S. 513.

addition to the national importance of resolving the split in the circuits discussed in section 2 above.

The wireless telecommunications sector that now exceeds wired telecom, and the margin is quickly growing, is increasingly central to the nation and its other critical services that depend on telecommunications. This sector is exclusively licensed by the FCC under the public policy criteria of the Communications Act, and this fast-expanding sector is subject to many large chapter 11 bankruptcy cases, but under the different public policy criteria of the Bankruptcy Act which conflict with the FCC Communications Act and FCC public policy. Bankruptcy and higher federal courts struggle with this conflict. The interrelated questions posed by this case, stated above, are of nationwide significance to resolve threshold issues in this conflict to guide the lower federal courts.

This national importance of is explained in *"FiberTower Injunction Raises Fresh Questions About the Interplay Between Telecommunications and Bankruptcy*

Law", *BNA's Bankruptcy Law Reporter*, 24 BBLR 1633,

12/13/2012, by The Bureau of National Affairs, Inc.

(underling added):

Telecommunications Policy and the FCC

Since the enactment of the Federal Communications Act of 1934 (the "FCA"), the FCC has been the primary regulator of interstate and international communications by radio, television, wire, satellite and cable.^{3/} Under the FCA, no party may broadcast over the airwaves without an FCC-granted license.^{4/} The FCC has two broad policy mandates: to establish and maintain fair rules of competition in the diverse telecommunications markets, and to ensure that spectrum is used efficiently for the benefit of American businesses and consumers.^{5/}

In recent years Congress has been concerned with increasing competition in telecommunications markets and making it possible for new entrants to participate in those markets.^{6/} Since 1993, the FCC has generally been required by statute to auction off unused spectrum on the theory that market forces would allocate it to users who would make the best and most efficient use of it.^{7/} The Telecommunications Act of 1996 (the "1996 Act") was the first overhaul of national telecommunications policy since the FCA was enacted; its goal was to remove all barriers to entry in the telecommunications market.^{8/}

In some respects, the 1996 Act, succeeded brilliantly: thousands of new firms entered the telecommunications markets, and billions of dollars of debt and equity capital were invested in these

start-ups. But for creditors and investors, the telecommunications revolution has had decidedly mixed results. Bankruptcies have been frequent, and have included some of the largest U.S. Chapter 11 cases ever filed, including WorldCom, Inc., Global Crossing, Ltd., Adelphia Communications, Corp., NextWave Communications, and more recently, DBSD, Inc., TerreStar Networks, Inc. and LightSquared. [¶ space added here]

Indeed, one commentator has suggested that the entire telecommunications industry is likely to be subject to persistent cyclicalities and instability.^{9/} For the FCC, the spectre of persistent failures poses a different policy problem: ensuring that the spectrum allocated to these firms is used and does not sit idle. Accordingly, the FCC has made many of its spectrum licenses conditional on proof that the licensees are using or developing the spectrum to provide service or risk loss of their licenses.^{10/}

Bankruptcy has quite different policy goals, including providing a fresh start to a troubled company.^{11/} The bankruptcy laws also presume that reorganizing a troubled business will yield better overall results to a business, its employees and creditors than would piecemeal liquidation of its assets.^{12/} For many troubled telecommunications companies, their FCC licenses represent their most valuable asset. Indeed, without their FCC licenses, these companies literally have no business, and thus bankruptcy courts have often been protective of debtors' efforts to maintain their licenses, thus creating the conflict between the public policy goals of the different areas of the law.

FCC v. NextWave

The starting point for any discussion of the FCC

and bankruptcy issues is the Supreme Court's decision in *FCC v. NextWave Personal Communications, Inc.*¹³ [...]

[Footnotes in original:]

² *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293 (2003).

³ Federal Communications Act of 1934, 47 U.S.C. § 151 et seq.

⁴ See 47 U.S.C. § 301.

⁵ See, Federal Communications Commission Spectrum Policy Task Force, Report of the Spectrum Efficiency Working Group, November 15, 2002 available at transition.fcc.gov/sptf/files/SEWGFfinalReport_1.pdf.

⁶ See, Connecting the Globe, A Regulations Guide to Building a Global Information Community, available at transition.fcc.gov/connectglobl/sec5.html.

⁷ See, 47 U.S.C. 309(j)(1) (authorizing competitive bidding). ⁸ See transition.fcc.gov/telecom.html.

⁹ Noam, *The Emerging Cyclicalities of the Telecom Industry*, published in *Global Economy and Digital Society* (Bohlin, Levin, Sung and Yoon, eds.) 2004.

¹⁰ See, generally, 47 C.F.R. Part 90; see also FCC, Wireless Telecommunications Bureau, Construction/Coverage Requirements, available at http://wireless.fcc.gov/licensing/index.htm?job=const_req_by_service.

¹¹ Warren, *Bankruptcy Policy*, 54 U. Chi. L. Rev. 775, 787 (1987).

¹² *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

¹³ *FCC v. NextWave Personal Communications, Inc.*, Id.

CONCLUSION

For the above reasons, petitioner seeks a Writ of Certiorari.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Warren Havens", written over a horizontal line.

Warren Havens
2649 Benvenue Avenue
Berkeley, California 94704
(510) 914 0910

Petitioner, pro se

Date: April 30, 2019

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 17-60742

In the Matter of: MARITIME COMMUNICATIONS/LAND
MOBILE, L.L.C., Debtor

WARREN HAVENS,
Appellant

v.

MARITIME COMMUNICATIONS/LAND MOBILE L.L.C.;
CHOCTAW TELECOMMUNICATIONS, L.L.C.,
Appellee

Appeal from the United States District Court for the
Northern District of Mississippi

ON PETITION FOR REHEARING

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE

Case: 17-60742 Document: 00514815961

Filed: 01/30/2019

APPENDIX B

**WARREN HAVENS, SKYBRIDGE SPECTRUM
FOUNDATION,
VERDE SYSTEMS LLC, ENVIRONMENTAL LLC,
INTELLIGENT TRANSPORTATION & MONITORING LLC,
and
TELESAURUS HOLDINGS GB LLC APPELLANTS
v.
MARITIME COMMUNICATIONS/LAND MOBILE LLC
APPELLEE**

CIVIL ACTION NO. 1:13-CV-180-SA

**UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF MISSISSIPPI ABERDEEN DIVISION**

June 14, 2017

ORDER

The Appellants in this case filed a number of appeals from the Bankruptcy Court regarding certain executory contracts and licenses. The appeals were consolidated into this lead case. *See* Order [66] consolidating 1:13-CV-180, 1:13-CV-181, 1:13-CV-182, 1:13-CV-183, 1:13-CV-184, 1:13-CV-190, 1:13-CV-191, 1:13-CV-192, 1:13-CV-193 and 1:13-CV-194.

The basis of the Appellants' claim and status in the bankruptcy case was the subject of a separate case in the United States District Court for the District of New Jersey. The New Jersey District Court dismissed the Appellants' claims. *See Havens v. Mobex Network Servs., LLC*, No. CIV. A. 11-993 KSH, 2011 WL 6826104 (D. N.J. Dec. 22, 2011), *aff'd*, 820 F.3d 80 (3d Cir. 2016) and *Havens v. Mar.*

Comme'ns/Land Mobile, LLC, No. CIV. A. 11-993 KSH, 2014 WL 4352300 (D. N.J. Sept. 2, 2014), *aff'd sub nom. Havens v. Mobex Network Servs., LLC*, 820 F.3d 80 (3d Cir. 2016). The United States Court of Appeals for the Third Circuit affirmed the dismissal by the District Court, and the United States Supreme Court denied certiorari. *See Havens v. Mobex Network Servs., LLC*, 820 F.3d 80 (3d Cir.), *cert. denied, Havens v. Mobex Network Servs., LLC*, — U.S.—, 137 S. Ct. 496, 196 L. Ed. 2d 404 (2016).

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In addition to the litigation in the Third Circuit, the Appellants were also involved in proceedings before the Federal Communications Commission related to the validity of the licenses at issue in the underlying bankruptcy case and the transfer of those licenses. Based on the information in the record, the Commission denied the relief requested by the Appellants, leaving them with no interest in the licenses in question. The Commission also denied the Appellants' request for reconsideration.

Appellee Maritime filed a Motion to Dismiss [92] arguing that the final adjudication of the Appellants' claims in both the Third Circuit and before the Commission leaves them with no claim or interest in the underlying bankruptcy case, and thus no standing to prosecute their appeals in this Court. In addition, the Appellants are

now unrepresented by counsel. This Court entered an Order [96] granting the Appellants 30 days to procure new counsel and additional time to respond to the pending Motion to Dismiss. Individual Appellant Havens entered a notice of his intent to proceed *pro se* [99] and filed a Response [100] to the Motion to Dismiss.¹ Havens' Response essentially concedes that his claims were extinguished in the Third Circuit and before the Commission, but he argues that he may have some as-yet unexhausted avenues to challenge the Commission's rulings.

In appeals from bankruptcy court, the "appellant shoulders the burden of alleging facts sufficient to demonstrate that it is a proper party to appeal." *Fortune Nat. Res. Corp. v. U.S. Dep't of Interior*, 806 F.3d 363, 366 (5th Cir. 2015) (citing *Rohm & Hass Tex., Inc. v. Ortiz Bros. Insulation, Inc.*, 32 F.3d 205, 208 (5th Cir. 1994)). "In ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations

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of the complaint, and must construe the complaint in favor of the complaining party." *Id.* at 366 (citing *Warth v. Seldin*, 422 U.S. 490, 501, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). The standard to determine whether a party has standing in bankruptcy court is the "person aggrieved" test. *In re Coho Energy Inc.*, 395 F.3d 198, 202

(5th Cir. 2004). "The 'person aggrieved' test is an even more exacting standard than traditional constitutional standing." *Id.* This test "demands a higher causal nexus between act and injury; appellant must show that he was directly and adversely affected pecuniarily by the order of the bankruptcy court in order to have standing to appeal." *Id.* at 203. (internal quotation marks and citation omitted).

Applying this standard to the instant case, it is clear that the Appellants failed to carry their burden of demonstrating standing. In light of the decisions by the Third Circuit, the Supreme Court, and the Commission, as well as other evidence in the record, it appears that the Appellants have no claim in the underlying case and no proof of adverse pecuniary impact. Nor have they brought forth any contradictory evidence. With no claim in the underlying case, the Appellants lack standing to prosecute this appeal.

For these reasons, the Appellee's Motion to Dismiss [92] is GRANTED. This appeal is DISMISSED with prejudice, and this CASE is CLOSED.

SO ORDERED on this, the 14th day of June, 2017.

/s/

Sharion Aycock

UNITED STATES DISTRICT JUDGE

Footnotes:

^{1.} The corporate Plaintiffs, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC did not respond to the Court's Order directing them to inform the Court of their new representation, and failed to respond to the pending Motion to Dismiss. The Court determines that these parties have abandoned their appeal.

APPENDIX C

WARREN HAVENS APPELLANT
v.
MARITIME COMMUNICATIONS/LAND MOBILE LLC
APPELLEE

CIVIL ACTION NO. 1:13-CV-180-SA

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF MISSISSIPPI ABERDEEN DIVISION

October 3, 2017

ORDER

The Appellants in this case filed a number of appeals from the Bankruptcy Court regarding certain executory contracts and licenses. The appeals were consolidated into this lead case. *See* Order [66].

Now before the Court are two motions. First, the Appellee filed a Motion to Alter [115] an earlier judgment entered by the Court. Second, Appellant Warren Havens now proceeding *pro se* filed a Motion for Rehearing [116] under Federal Rule of Bankruptcy Procedure 8022 requesting that this Court overturn its earlier decision dismissing this appeal.

In its Motion to Alter [115], the Appellee requests that the Court alter its earlier order to make it clear that although Havens may proceed *pro se* on his personal behalf, he may not represent the previously dismissed corporate Appellants. The Court's earlier orders made it clear that the corporate Appellants previously involved in this

case are dismissed for failing to retain counsel and for failing to comply with this Court's orders. *See* Orders [112, 96]. The record is also clear that individual Appellant Havens' subsequent motion for rehearing now before the Court was made on his personal behalf only and not on behalf of the now dismissed corporate Appellants. Although Havens may proceed *pro se*, the corporate Appellants may not. *See* Orders [112, 96]. Because the record and this Court's orders on this issue are clear, the Court finds no need to modify its earlier order as the Appellee requests.

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As to Havens' Motion for Rehearing [116], the Court finds that Havens failed to raise any argument or evidence relevant to the substance of the Court's decision. The Court previously dismissed this appeal because Havens has no claim in the underlying case, no proof of adverse pecuniary impact, and no contradictory evidence. *Fortune Nat. Res. Corp. v. U.S. Dep't of Interior*, 806 F.3d 363, 366 (5th Cir. 2015); *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004). Instead of addressing the substance of the Court's ruling, Havens merely reiterates his previous unavailing arguments, namely that he has a number of ancillary claims with the Federal Communication Commission. The Court already fully addressed the merits of these arguments.

Federal Rule of Bankruptcy Procedure 8022 states, in relevant part: "The motion [for rehearing] must state with particularity each point of law or fact that the movant believes the district court [. . .] has overlooked or misapprehended and must argue in support of the motion. FED. R. BANKR. P. 8022(a)(2). In the instant motion, Havens wholly fails to state with particularity any point of law this Court overlooked or misapprehended, and fails to raise any question as to "whether the Court would have reached a different result had it been aware of its mistaken use of facts or law." FED. R. BANKR. P. 8022(a)(2); *In re Coleman*, No. ADV 14-1046, 2015 WL 7101129, at *1 (E.D. La. Nov. 13, 2015) (citing *In re Hessco Indus., Inc.*, 295 B.R. 372, 375 (9th Cir. 2003). Because Havens' motion is without merit and fails to comply with the requirements of Rule 8022, it is denied.

For all these reasons, the Appellee's Motion to Alter [115] is DENIED.

The Appellant's Motion for Rehearing [116] is DENIED.

SO ORDERED on this, the 3rd day of October, 2017.

/s/ Sharion Aycock

UNITED STATES DISTRICT JUDGE

APPENDIX D

**In the Matter of: MARITIME COMMUNICATIONS/LAND
MOBILE L.L.C., Debtor**

WARREN HAVENS, Appellant

v.

**MARITIME COMMUNICATIONS/LAND MOBILE L.L.C.;
CHOCTAW TELECOMMUNICATIONS, L.L.C., Appellee**

No. 17-60742

**UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT**

December 20, 2018

Summary Calendar

Appeal from the United States District Court for the Northern
District of Mississippi
USDC No. 1:13-CV-180

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Warren Havens, proceeding *pro se*, appeals two orders dismissing his bankruptcy appeals and denying rehearing. Because he has not alleged facts

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sufficient to demonstrate standing, or shown that the district court erred in denying rehearing, we AFFIRM the orders of the district court.

I

Havens's participation in the bankruptcy case below was based on his claims against the debtor, Maritime Communications/Land Mobile L.L.C. (Maritime), in a separate case in the District of New Jersey. Havens did not prevail on any claim in the New Jersey case.¹

Besides referring to the New Jersey case, Havens's bankruptcy proof of claim also says that it may be based on his interest in "any legal and/or administrative proceedings." Havens participated in proceedings before the Federal Communications Commission (FCC) about the validity and transfers of licenses held by Maritime. The FCC denied relief to Havens and also "bar[red] Mr. Havens and the Havens companies from future participation in this proceeding as a consequence of their contemptuous and disruptive conduct." *Maritime Commc'ns/Land Mobile, LLC*, 2015 WL 1890837, at *1 (Apr. 22, 2015) (barring participation); *see* Warren C. Havens, 32 F.C.C.R. 218, 218 (2017) (denying substantive relief).

When the bankruptcy court confirmed Maritime's plan of reorganization, Havens appealed several bankruptcy orders to the district court. The district court consolidated Havens's appeals into this case. It then granted a motion to dismiss the appeals because Havens lacked standing. The district court also denied Havens's motion for rehearing.

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II

Standing to appeal an order of the bankruptcy court "is an even more exacting standard than traditional constitutional standing." *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004). "[T]he 'person aggrieved' test demands a higher causal nexus between act and injury; appellant must show that he was 'directly and adversely affected pecuniarily by the order of the bankruptcy court' in order to have standing to appeal." *Id.* at 202-03 (quoting *In re Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983)).

Bankruptcy Rule 8022 does not provide a standard of decision for a motion for rehearing, but such a motion may be granted to correct a "mistaken use of facts or law" in the prior decision. *In re Coleman*, Civil Action No. 15-569, 2015 WL 7101129, *1 (E.D. La. Nov. 13, 2015) (citing *In re Hessco Indus., Inc.*, 295 B.R. 372, 375 (9th Cir. 2003)).

III

Havens addresses a variety of peripheral issues in his brief but does not identify facts sufficient to demonstrate his standing. He says that the district court improperly held that he lacked standing to participate in FCC administrative proceedings. This mischaracterizes the decision. The district court did not purport to resolve Havens's

standing before the agency. Rather, it analyzed his standing to appeal the bankruptcy orders. After his claims failed in the New Jersey case, he had no asserted interest in the bankruptcy. And even generously construing Havens's arguments as a challenge to the treatment of his interests in FCC proceedings, he misses the mark. The district court correctly noted that the FCC had denied relief to Havens, leaving him with no interest in the licenses either.

Because he had no remaining claim against Maritime, Havens was not "directly and adversely affected pecuniarily by the order of the bankruptcy

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court," as required for standing to appeal. *Coho Energy*, 395 F.3d at 203 (quoting *Fondiller*, 707 F.2d at 443). And the district court did not err in denying Havens's motion for rehearing. The motion essentially reiterated his original arguments and did not identify mistaken use of facts or law in the prior order.

The court has considered Havens's other arguments and found them to be without merit. The orders of the district court are AFFIRMED.

Footnotes:

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

^{1.} The district court dismissed or otherwise granted judgment against Havens's claims in two opinions. *Havens v. Mobex Network Servs., LLC*, No. CIV. A. 11-993 KSH, 2011 WL 6826104 (D.N.J. Dec. 22, 2011); *Havens v. Mar. Commc'ns/Land Mobile, LLC*, No. CIV. A. 11-993 KSH, 2014 WL 4352300 (D.N.J. Sept. 2, 2014). The Third Circuit affirmed both decisions. *Havens v. Mobex Network Servs., LLC*, 820 F.3d 80 (3d Cir.), *cert. denied*, — U.S. —, 137 S. Ct. 496 (2016).
